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AMCCC-B-BI

POINT PAPER

23 October 1998

SUBJECT: New Competitive Sourcing and Privatization Legislation

PURPOSE: Provide information about changes to the DOD competitive sourcing and privatization legislation contained in both the FY 99 DOD Authorization and Appropriations Act. Both laws were signed by the President on 17 October 1998.

AUTHORIZATION ACT:

- **Sec. 341** clarifies that an activity can be "depot-level maintenance and repair" pursuant to 10 U.S.C. 2460(a) regardless of the location at which the maintenance or repair is performed.
- **Sec. 342** amends the reporting and analysis requirements before changing a commercial and industrial type function from performance by DOD civilians to performance by the private sector at 10 U.S.C. 2461.
 - DOD must certify that the proposed performance of the commercial or industrial type function by the private sector is not the result a decision to impose limitations in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees. The failure to submit the certification may be challenged to the agency. The issuance of a solicitation or award of a contract is delayed until the certification is submitted.
 - Studies with **50** or fewer employees are exempt from the statutory reporting and analysis requirements.
- **Sec. 343** requires the Secretary of Defense to notify Congress the first time an item is designated commercial under 10 USC 2464 and include a justification that addresses the percentage of commonality of parts between the commercial and government version of the item and the costs of government versus private sector maintenance of the item.
- **Sec. 346** requires the submission of a report to Congress describing the competitive procedures to be used and a cost-benefit analysis demonstrating savings over the life of the contract 30 days prior to entering into a prime vendor contract for depot-level maintenance and repair of a weapon system or other military equipment as defined by 10 USC 2464(a)(3).
- **Sec. 348** requires the Comptroller General to submit to Congress a report concerning the effect that QDR reductions in AMC will have on workload and readiness if implemented, and the projected cost savings and the manner in which savings are expected to be achieved by 31 March 1999. It does **not** require a delay in implementation of the reductions.

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- **Sec. 375** amends 32 U.S.C. 113 to require that financial assistance can be provided to the National Guard for performing work for the Army only if the National Guard was selected using competitive procedures permitting all public and private sector sources to bid on the work.

APPROPRIATIONS ACT:

- **Sec. 8014** requires that functions being performed by more than 10 DOD civilian employees may not be converted to contractor performance until a most efficient and cost-effective organization analysis is completed and certified to Congress. This year's version of the annual provision clarifies that: (1) functions included on the procurement list pursuant to the Javits-Wagner-O'Day Act; (2) functions planned to be converted to performance by a non-profit agency for the blind or severely handicapped; and (3) functions planned to be converted to performance by a qualified firm under 51 per cent Native American Ownership, are exempt from the requirements of both **Sec. 8014 and 10 USC 2461**.

- The Army is required to provide 90 days notice to Congress before awarding any new contracts pursuant to A-76 related studies at Pine Bluff Arsenal, Rock Island Arsenal, or Watervliet Arsenal.

- The SEC DEF is required to submit a report to Congress by 31 March 1999 providing a detailed assessment of the results of DOD's privatization strategy to date. The report must specify those functions or activities selected for outsourcing, the criteria used to select these functions, and the net savings achieved by outsourcing in FY 1996-1998.

S. 314, the Federal Activities Inventory Reform Act (FAIR) (P.L. 105-270, 19 October 1998) passed in both chambers on 5 October 1998. This statute

- Requires agencies to publish annual inventories of activities that the agency performs that are not inherently governmental. Omissions from or inclusions of activities on the annual inventory may be challenged administratively within 30 days by public or private offerors. Federal agencies must complete the functions in the inventory within a reasonable time, using competitive procedures.

RELEASED BY: Edward J. Korte
Command Counsel
DSN 767-8031
7E06

ACTION OFFICER: Diane Travers
Associate Counsel
DSN 767-7571
7N56

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